and Order at para. 9,[6] the facts of the instant matter do not include any situation for which waiver could be granted.

Matsushita could just as easily have named Kevin Lausman, or any of more than 250 million citizens of the United States of America to replace Kawada when Kawada was preparing to resign. Midway to Nextel's possibly becoming a member of the American common carrier fleet, however, Matsushita torpedoed Nextel below the waterline by nominating a citizen of Japan to Nextel's board after May 24, 1993, thereby making Nextel ineligible to request any waiver of Section 310(b).

Section 90.151 of the Commission's Rules sets forth the requirements for a waiver of the Private Radio Services Rules. Rule Section 22.19 sets forth the requirements for waiver of the Public Mobile Services Rules. The rules applicable to both of the land mobile radio services establish three essential requirements for the grant of any waiver. First, the request must "set forth reasons in support thereof", 47 C.F.R. §90.151(a), or must include a "statement of reasons sufficient to justify a waiver," 47 C.F.R. §22.19(a)(1). Second, the request must include a "showing that unique circumstances are involved and that there is no reasonable alternative solution", 47 C.F.R. §90.151(a), *see, also*, 47 C.F.R. §22.19(a)(1)(ii). Third, the request must

[6] The Commission stated that "we interpret this language to refer to the precise identities of persons or entities and not merely to preexisting levels of foreign ownership interests," First Report and Order at para. 9. Accordingly, even if there were deemed to be an "ownership interest" in a directorship, it was personal to the director and could not lawfully be transferred to another alien subsequent to May 24, 1993.

include an affirmative showing that "grant of the waiver is otherwise in the public interest," 47 C.F.R. §22.19(a)(1)(i). Nextel's request met none of these essential requirements for any waiver of law. In essence, Nextel relied on nothing more than the existence of a situation of its own making, combined with a demonstrated intent to continue creating such situations after the time that it had notice of the consequences to itself of such situations. Where the public interest in protecting domestic American telecommunications against alien influence is the crucial factor for the Commission to consider, Nextel's failure to meet any of the well-established requirements for waiver should result in the dismissal or denial of Nextel's Petition.

Nextel did not claim a single reason why the Commission should grant the waiver which it requested. Nextel did not claim either that unique circumstances were involved which might distinguish it from any other of the persons requesting a waiver. To its credit, perhaps, Nextel did not claim that there would be any benefit to the public interest in having a citizen of Japan as a member of its board of directors.

The Commission's range of discretion in considering waiver requests is broad, and the Commission will be sustained unless denial of a waiver request is an abuse of discretion, WAIT Radio v. FCC, 459 F.2d 1203, 1207 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972). "If a waiver would violate the policy of the rule, it can only be justified by an affirmative showing of countervailing considerations," *id.* at 1207-1208. Given the arrogant and total absence of any countervailing consideration presented by Nextel's Petition, the Commission should feel secure in determining that no waiver was justified. The court in WAIT v. FCC, 418

F.2d 1153 (D.C. Cir. 1969) required the Commission give a "hard look", *id.* at 1157, to a waiver request. The Commission should give a hard look to Nextel's Petition, then turn a hard eye to it, and then give it a hard boot, with a firm assurance that the Commission will be sustained.

Public Policy Would Be Thwarted By Grant Of Nextel's Petition

On February 15, 1994, the United States Trade Representative, Ambassador Michael Kantor, determined that "Japan has violated the 1989 Third Party Radio and Cellular Agreement by failing to provide comparable market access to Japan's cellular telephone and network equipment market. We have been pursuing access to this market since 1985. Three agreements and almost ten years later, U.S. cellular telephone systems remain effectively excluded from over half the Japanese markets," Statement dated February 15, 1994, a copy of which is attached hereto as Exhibit I. More recently, as a result of the refusal of Japan to trade fairly with the United States in the field of radio telecommunications, the President has revived his powers under Section 301 of the Trade Act of 1988, directing a study of possible actions against Japan under his "Super 301" authority.

The unfair competition which the Empire of Japan has imposed upon the United States of America in the field of telecommunications is of proportions unprecedented in any other field of international commerce. The extent to which Japan has closed its markets to American telecommunications products, while freely exploiting the American consumer's demand for

electronic devices, has been the subject of countless filings with the federal government by American manufacturers.

It was and is the clear intention of Congress to limit strictly control and influence over use of the radio spectrum by foreigners. It was to prevent the seduction and foreignication of the domestic American public mobile telecommunications business that Congress applied Section 310(b) of the Communications Act immediately to would-be future CMRS operators such as Nextel. To effect the will of Congress and to integrate its actions with the foreign policy of the United States as promulgated by the Office of the President, the Commission should act decisively against Nextel's request.

The Commission should recognize a trade war for what it is, whether declared or not. Like the Cold War, the continuing trade war of the Pacific Rim is a war, even when the cannon are silent. The War of the Pacific Rim has battles which are lost and won, and it has vicious, scheming aggressors and valiant defenders. The long, dark, terrifying, Cold War of attrition ultimately destroyed the Soviet Union and placed the United States in a perilous state of internal and external debt. In a war, each citizen must do his part. So long as Japan continues to discriminate against the import of American telecommunications equipment, so long as the Office of the President is willing to stand against the market predation of Imperial Japan, the Commission should do its part by refusing to allow any citizen of Japan to hold more than one-fifth of the capital stock of any common carrier, or to be an officer or director of any common

carrier within the Commission's jurisdiction. Toward that end, the Commission should deny the waiver requested by Nextel.

Nextel Deserves No Sympathy

Nextel deserves no sympathy for its situation, whatsoever. By its own avarice and disregard for the home team, Nextel has opened a new, developing ESMR market to participation by a Japanese company, at a time that Japan is not willing even to open the maturing cellular telecommunications technology to fair competition by an American manufacturer. By calculated steps, Nextel has placed Motorola in a position of having to buy into Nextel to protect itself against the unfairly applied economic power of Japan. By hubris, Nextel has then turned again to open itself anew to additional Japanese participation. By misrepresentation, by lack of candor and by arrogance, Nextel has had the audacity to request that the Commission grant a waiver of a situation which does not, in fact, exist, based on no stronger showing than an expectation that the Commission will be delighted to do Nextel's bidding.

Nextel, and the public, need to be reminded that no person is above the law, or beyond just treatment by the Commission. To that end, the Commission should dismiss or deny Nextel's Petition, and should strip Nextel of its commercial radio authorizations.

Apparently compelled to defend its domestic market in the digital equipment which it has developed for Enhanced SMR service, Motorola has had to compete with Matsushita by also

acquiring an interest in Nextel. After having lured Matsushita into investing, Nextel then turned aside from Matsushita and gave Motorola the opportunity to bring major assets into Nextel to protect Motorola's digital radio research and development efforts. Now, having locked up Motorola, Nextel has revealed that it is turning east on its axis once again, making a deal with NTT.

Matsushita is not an innocent victim in this matter. It is important to recognize what Matsushita must have believed that it was purchasing by its investment in Nextel, which gave Matsushita the right to name a person for the Nextel board of directors. Matsushita or its affiliated corporations is one of Japan's leading manufacturers of consumer electronic equipment, trading under such brand names as Panasonic, Technics, and Quasar. Matsushita must have believed that its investment in Nextel would secure for it a new and rich American market for its deported goods. The right to name a person for Nextel's board of directors was surely intended to allow Matsushita to develop and protect Matsushita's market expectancy.

Nextel's callous disregard for the security of America's national interest in a strong and fair market for its telecommunications technology might have escaped scrutiny had Nextel been able to remain outside the field of common carrier communications. However, Congress has decreed otherwise and Nextel has moved into a different league, where different rules apply. While Nextel's avarice, hubris, and arrogance of its duty to be forthright with the Commission might have seemed useful in an earlier day, the Commission should deny Nextel's Petition,

revoke Nextel's authorizations, and send a clear signal around the world that will of Congress and the authority of the Commission will be treated with respect.

Conclusion

For all the foregoing reasons, Lausman respectfully requests that the Commission dismiss or deny Nextel's Petition, and that the Commission either revoke outright, pursuant to Section 310(b) of the Communications Act, all authorizations held or controlled by Nextel, or designate for hearing all of the authorizations held by Nextel so that it can determine whether Nextel has the character qualifications required to be a Commission licensee.

Respectfully submitted,
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Dated: March 11, 1994

EXHIBIT I

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FOR IMMEDIATE RELEASE
TUESDAY, FEBRUARY 15, 1994

94-07
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Statement of Ambassador Michael Kantor

I have determined today that Japan has violated the 1989 Third Party Radio and Cellular Agreement by failing to provide comparable market access to Japan's cellular telephone and network equipment market. We have been pursuing access to this market since 1985. Three agreements and almost ten years later, U.S. cellular telephone systems remain effectively excluded from over half the Japanese market.

The United States Government determined on December 2, 1993 to make a decision on or about February 15, 1994 as to whether Japan is in compliance with the 1989 agreement.

This is, in many ways, a classic case of the determination of Japan to keep its markets closed, particularly to leading edge U.S. products. There is no doubt that Motorola's cellular phones and network equipment are among the best in the world. In the part of Japan where Motorola has market access, it has achieved great success. Its system has more than 438,500 subscribers. But it has been effectively shut out of the critical Tokyo market, particularly at a time when Japanese manufacturers were trying to develop products competitive with Motorola's. In fact, the Motorola system in the Tokyo market has only 12,800 subscribers. Clearly, Motorola has lost millions of dollars in sales opportunities.

In an agreement embodied in a series of letters between 1985 and 1987, the Government of Japan agreed to the principle of comparable market access to the Japanese cellular phone market. Yet, it failed to take the actions necessary to provide that access. As a result, in April 1989, USTR found Japan in violation of its obligations under that agreement and published a preliminary retaliation list for public comment and hearing under Section 1377.

Just prior to the deadline for imposition of sanctions, Japan agreed, in a 1989 Third Party Radio and Cellular Agreement, to take specific measures to allow comparable market access. In the agreement, Japan designated, by name, a cellular telephone

operator to install the Motorola system. By doing so, Japan also assumed the responsibility of ensuring that the operator performed. That operator, as an agent of the Government of Japan, reiterated in a 1992 letter its commitment to build the system. Notwithstanding that agreement and the prior two agreements, the system, only after considerable U.S. Government involvement, covers just 40% of the Tokyo region. Comparable market access has not been achieved, a clear violation of the 1989 agreement.

We have said many times that we are committed to enforcing our trade agreements and achieving results. I am today taking steps to make sure that Japan lives up to the 1989 Agreement.

We plan, within 30 days, to announce for public comment a list of proposed trade action.

-30-

FACT SHEET ON ORIGIN AND IMPLEMENTATION OF THE
1989 CELLULAR TELEPHONE AGREEMENT BY JAPAN

ACTIONS OF THE GOVERNMENT OF JAPAN

oThe Government of Japan has repeatedly claimed that their system is open, that U.S. firms do not try hard enough to sell into the Japanese market and that the quality of U.S. products are inadequate.

oThe history of the attempts by U.S. products and suppliers to enter the Japanese cellular telephone market shows that the Japanese system, in fact, is not open and that highly competitive U.S. products, manufactured by companies that exert extraordinary effort to enter the Japanese market, can be thwarted by barriers erected by the Japanese Government.

oU.S. manufacturers developed the cellular telephone industry and have always been in the forefront technologically. One of the results of the barriers erected by Japan in this market is that Japanese producers have been given time to develop products to compete with U.S. products and suppliers.

oThrough regulation of technical standards and allocation of radio spectrum, the Government of Japan has maintained barriers to full access by U.S. products and suppliers.

oMotorola has been trying to enter the Japanese market since the early 1980s. First it was stymied by technical standards that were written by an association of Japanese manufacturers of telecommunications equipment and reflected only Japanese equipment.

oThis barrier was removed in 1985 as part of the MOSS Agreements. Japan agreed to include foreign firms on a blue ribbon committee, the Telecommunications Deliberation Council (TDC), that would make a recommendation to MPT (Ministry of Posts and Telecommunications) on the standards to be adopted for cellular phone systems.

oIn March 1986, TDC recommended that TACS, Motorola's system, as well as two other systems, were acceptable.

oMotorola found a cellular telephone operator, DDI (Daini Denden), which believed that the TACS system was technologically and competitively superior to the other two systems.

oAt that point, however, the Government of Japan erected a new barrier. It gave NTT the right to provide cellular telephone service throughout the country. At the same time, it assigned a newly formed operator, IDO (Nippon Idou Tsushin), the eastern half of Japan, including Tokyo, with about 60-70% of the potential market and gave DDI the remaining 30-40%. Thus, in

exercising its regulatory powers, it deprived Motorola of its potential share in the Japanese market.

oAfter months of negotiations, MPT agreed to divide the territory between IDO and DDI more evenly -- but still left NTT the right to operate in the whole country and IDO the lucrative Tokyo-Nagoya region.

ADDITIONAL BARRIERS TO MARKET ACCESS

oThe Japanese decision to restrict DDI to only a portion of the country resulted in a significant competitive disadvantage for DDI and Motorola. TACS subscribers could not use their telephones when they entered the Tokyo-Nagoya region, while the NTT system was available nation-wide. This made the TACS system unattractive to many subscribers and Motorola asked MPT to allocate enough radio frequency to allow the TACS system users to roam in the Tokyo-Nagoya region. Thus another barrier existed -- the absence of frequencies for use by the TACS system in the Tokyo-Nagoya region.

MOSS AGREEMENTS

oIn a series of letters exchanged in 1986 and 1987 between the Governments of Japan and the United States (the MOSS Agreements), Japan recognized the principle of comparable market access and agreed to make the system for allocating radio frequencies more transparent and to provide opportunities for technical consideration of the access of the TACS system to the Tokyo-Nagoya region.

oNotwithstanding the commitments in the MOSS Agreements, MPT continued to insist that no frequency was available in the Tokyo-Nagoya region to allocate to the TACS system. Yet, in 1988, MPT proposed allocating 40 MHz in that region to a new telephone system that would offer modified cellular service. It thus became clear that unused spectrum was available in the Tokyo-Nagoya region. The Government of Japan simply was not willing to make it available to operators using U.S. products.

UNITED STATES RESPONSE TO JAPANESE BARRIERS

oOn April 28, 1989, the USTR determined that the Government of Japan was not in compliance with its commitments with regard to cellular telephones under the MOSS Agreements.

oJapan's regulatory decisions had limited the market for the TACS system, and its excuses for not providing full access by assigning additional frequency were simply untrue. USTR published a proposed set of retaliatory measures on April 28 and set a deadline for retaliation against Japanese exports of goods and services of July 10, 1989. On May 24, 1989, USTR held a public hearing on proposed retaliation.

THE 1989 CELLULAR AGREEMENT

oOn June 28, 1989, the Government of Japan agreed to allocate the necessary spectrum, removing one more barrier it had created to Motorola's full access to the Japanese market.

oThe 1989 Agreement required MPT to assign 5 MHz of frequency in the Tokyo-Nagoya region for use by the TACS system. Exercising its regulatory authority in the face of opposition from Motorola, IDO and the U.S., MPT insisted on assigning the frequency to IDO, which was already operating the Hi-Caps (NTT) system in that region, creating an obvious conflict of interest.

oThis forced partnership between Motorola and IDO has not provided Motorola with comparable market access.

IMPLEMENTATION OF THE 1989 AGREEMENT

oImmediately after the 1989 Agreement, Motorola attempted to provide its cellular network equipment to IDO for the installation of the TACS system. IDO requested a delay until June 1990 and then a further delay until November 1990.

oMotorola began shipping network equipment (base stations, transmitters, etc.) in November 1990 but the system did not begin operation until October 1991. More than two years after the agreement went into effect, IDO had installed only a fraction of the total number of cell sites needed to make the system fully operational.

oIn the interim, and this is critical, NTT was able to develop a portable handheld cellular telephone comparable to Motorola's Microtac. As a result, Motorola's two-year lead in this technology was lost. The Motorola product was allowed to enter the Tokyo-Nagoya market only after there was a comparable Japanese product.

THE 1992 AGREEMENT

oIDO continued to stall through March 1992. Under pressure from a deadline for the annual Section 1377 review, IDO committed by letter to go forward with installing the TACS system, setting forth a plan for the development of the system. This was the third commitment.

oIn the 15 months following this commitment, IDO made only token progress in installing the system.

oCurrently, and only after extensive consultations on this issue in recent months, the system covers just 40 percent of the Tokyo region -- nearly five years after the 1989 agreement and over nine years since Motorola began intensive efforts to introduce this system in Tokyo.

RECENT EFFORTS

oUSTR and the Government of Japan have discussed these issues at the ministerial and sub-ministerial levels in July, September, and October 1993 and in January and February 1994. The latest meeting was February 14. In addition, there have also been working level discussions of the issues.

oIDO and Motorola have also met at least seven times at senior levels, most recently February 13 in Tokyo. In addition, Motorola, the Department of Commerce, and USTR have discussed this issue with important IDO stockholders such as Toyota.

oThese meetings produced no satisfactory response as to how Motorola was to achieve the market access promised by three agreements.

oUSTR has informed the Government of Japan that a resolution of this issue requires concrete steps by the Government to remove the final barriers to comparable market access in the Tokyo-Nagoya region, as first envisioned almost ten years ago.

Description of Section 1377

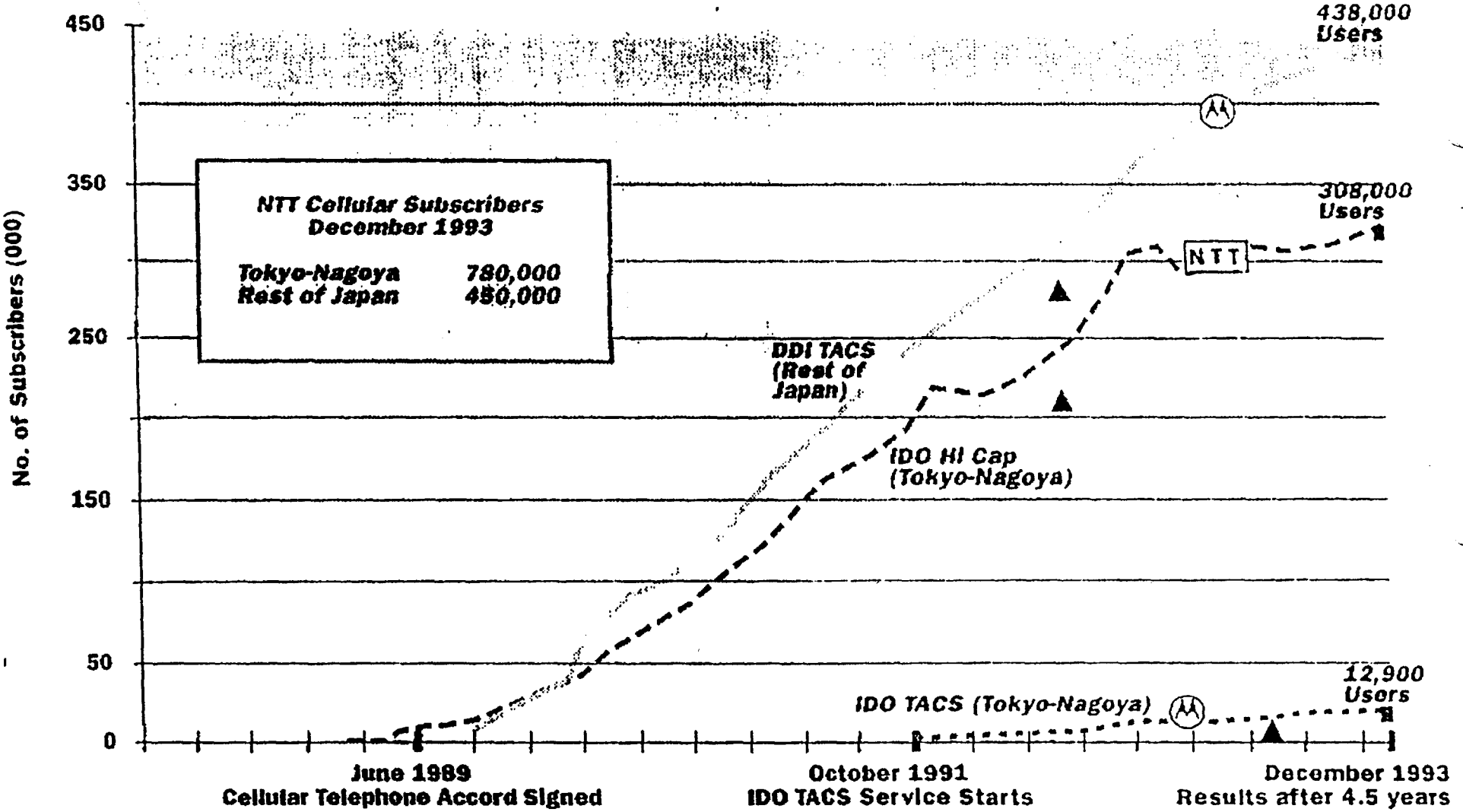
Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR to review annually the operation and effectiveness of each telecommunications trade agreement in force between the United States and another country or countries. Agreements subject to review include agreements entered into pursuant to previous section 1377 investigations. In the review, USTR is to determine whether any act, policy, or practice of the foreign country that entered into the agreement (1) is not in compliance with the terms of the agreement, or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to U.S. telecommunications products and services.

An affirmative determination under section 1377 is required to be treated as an affirmative determination under section 304(a)(1)(A) of the Trade Act of 1974, as amended. Pursuant to that section, the Trade Representative must take action authorized in section 301(c) of the Trade Act of 1974, subject to the specific direction, if any, of the President, and all other appropriate and feasible action that the President may direct, to enforce U.S. rights under the trade agreement in question or to eliminate the act, policy, or practice that otherwise violates, is inconsistent with, or denies benefits to the United States under the trade agreement. The Trade Representative is not required to take action under certain circumstances, such as when the foreign country has agreed to eliminate the act, policy, or practice.

Among other sanctions, section 301(c) of the Trade Act of 1974 authorizes the Trade Representative to impose duties or other import restrictions on the goods of, or fees or restrictions on the services of, the foreign country, for such time as the Trade Representative determines appropriate.

U.S. Access to Japan's Cellular Telephone Market

System Start-Up Comparison



Source: Industry Data

▲ Indicates 50 Months After License

JAPAN CELLULAR TELEPHONE SERVICES

Comparison Among Three Operators

	NTT (Hi Cap)			IDO Tokyo/Nagoya		DDI (Tacs)	Remarks
	Total	Tokyo/ Nagoya	Other Regions	HI-Cap	TACS	(All CT's Combined)	
Number of Subscribers	1,249,500	779,680	449,820	308,000	12,881	438,500	As of Dec 31, '93
Number of Cells	2,172	892	1,280	361	86 (107)*	512	As of Dec 31, '93 *Installation in progress
Number of Voice Channels	59,307	34,605	24,702	11,836	2,743 (2848)*	20,227	As of Dec 31, '93 *Installation in progress
Number of Switches	44	25	19	7	2 (1)*	19	As of Dec 31, '93 *Installation in progress
Market Share (Subscribers) Served Market	62.82%	70.84%	50.64%	27.99%	1.17%	49.36%	As of Dec 31, '93

))

AFFIDAVIT

I declare under penalty of perjury under the laws of the United States that the foregoing Opposition is true and correct. Executed on 3/11, 1994.

Kevin Fossum

Certificate Of Service

I hereby certify that on this eleventh day of March, 1994, I served a copy of the foregoing Opposition on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

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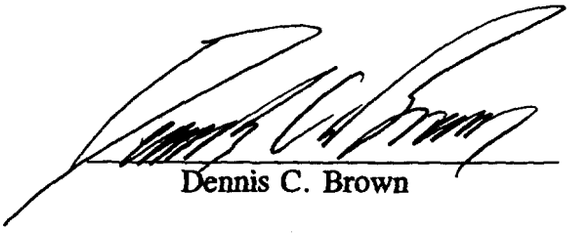

Dennis C. Brown

CERTIFICATE OF SERVICE

I, Nakia M. Marks, hereby certify that on this 11th day of July, 1994, I caused a copy of the attached Reply Comments to be served by hand delivery or first-class mail, postage prepaid to the following:

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